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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of U S WEST Communications, Inc. For Forbearance From Regulation as a Dominant Carrier in the Phoenix, Arizona MSA	)	CC Docket No. 98-157

AT&T OPPOSITION

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October 7, 1998

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Pursuant to the Commission's Public Notice, DA 98-1712, released August 28, 1998, AT&T Corp. ("AT&T") hereby opposes the Petition of U S WEST Communications, Inc. for Forbearance ("U S WEST Petition"), filed August 24, 1998.

INTRODUCTION AND SUMMARY

On August 24, 1998, U S WEST petitioned the Commission pursuant to Section 10 of the Telecommunications Act of 1996 (47 U.S.C. § 160) to forbear from regulating U S WEST as a dominant carrier in the Phoenix market for special access services and dedicated transport services at speeds of DS1 and above. Specifically, U S WEST asked that the Commission allow permissive detariffing, which would permit but not require the filing of tariffs on one-day's notice without cost support. U S WEST also asked that it be allowed to set rates free from price cap regulation, and to deaverage rates within the Phoenix MSA.

Section 10(a) of the Act requires the Commission to determine that a request for forbearance satisfies three criteria:

(1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations, by, for or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) Enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) Forbearance from applying such provision or regulation is consistent with the public interest.

Under Section 10(b), the Commission must also find that the proposed relief will "promote competitive market conditions" and "enhance competition among providers of telecommunications services." U S WEST's Petition fails to satisfy these criteria for several reasons.

First, the U S WEST Petition is in conflict with the Commission's policies favoring a market-based approach to access charge reform, and thus the Commission cannot find it in the public interest U S WEST's description of the state of the high capacity market in Phoenix is fundamentally erroneous. In particular, U S WEST relies on a flawed definition of a "retail" market, which vastly overstates the real competition it faces. U S WEST also incorrectly claims that competitive local exchange carriers ("CLECs") can quickly and inexpensively expand their networks to serve thousands of new end user locations, and immediately capture U S WEST's high capacity business. Finally, U S WEST erroneously claims that AT&T has disconnected a majority of its Special Access circuits in the Phoenix area, whereas when in fact AT&T still purchases about 90% of its DS1s from U S WEST, and about 80% of AT&T's expenditures in the Phoenix area on high capacity services are for the very offerings for which U S WEST is seeking forbearance.

The Commission cannot conclude that forbearance will be in the public interest in the absence of a reasonably competitive market to constrain U S WEST's conduct. U S WEST has failed to show that there is such a competitive market.

Additionally, it is noteworthy that although U S WEST is seeking new forms of pricing flexibility, including the ability to geographically deaverage its high capacity rates, it is not even fully utilizing the considerable pricing flexibility the FCC has already given U S WEST for its high capacity services. Certainly U S WEST should use the competitive tools the Commission has already given it before asking for new ones.

For these reasons, AT&T respectfully requests that the Commission deny the U S WEST Petition.

ARGUMENT

I. THE PUBLIC INTEREST WOULD NOT BE SERVED BY GRANT OF THE U S WEST PETITION.

U S WEST's proposal conflicts with the Commission's "market based" approach to access reform. The Commission has relied on the existence of competition to bring about reduced access rates for customers in general, rather than reductions for only a select or narrow market segment.[1] If U S WEST is permitted to further deaverage access rates and target reductions to a limited group of large business customers, it would have little, if any, incentive to lower access prices for the vast majority of customers. Because the access market is characterized by prices that greatly exceed costs, the main objective of regulation ought to be to reduce prices to all customers rather than to a small subset of individual customers. The U S WEST proposal, however, is contrary to this objective.

U S WEST cannot show that most -- or even a sizable proportion -- of the high capacity customers in the Phoenix area enjoy fully effective competition in the provision of their high capacity services. Indeed, U S WEST's own analysis recognizes that many customers are located thousands of feet from the nearest competitive facilities, and therefore would see no benefits from the U S WEST proposal. Because such customers are unprotected from the existence of monopoly power over access,

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1 Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges, First Report and Order (CC Docket Nos. 96-262, 94-1, 91-213, 95-72), FCC 97-158, 12 FCC Rcd 15982 (released May 16, 1997), ¶¶ 258-274.

deregulation such as U S WEST now seeks would clearly harm them, while possibly benefiting others.

U S WEST bases its request for relief largely on the claim that it now has a "retail" market share of some 30%.[2] U S WEST claims that retail market share "is the most important market share statistic because it identifies the carrier that has the direct account relationship with the customer" and thereby "has a significant marketing advantage over U S WEST when it is only the facilities provider."[3]

U S WEST's "retail" market approach is both misleading and irrelevant. Because U S WEST is not permitted to directly offer interLATA services, but has a near-monopoly over the facilities necessary for other carriers to do so, it is hardly surprising that its facilities would be resold by interLATA carriers to offer interLATA services.[4] U S WEST's definition of "retail" competitive losses illogically turns the requirements of Section 271 of the Act into a "loss of market share" that must be cured through regulatory relief.

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2 U S WEST Petition at 18-23.

3 U S WEST Petition at 19.

4 Indeed, U S WEST and other ILECs establish entire marketing and sales support organizations to service their "wholesale" market segments, which is hardly a response that one would expect a company to take if it viewed wholesale purchases as competitive losses.

Moreover, U S WEST's definition of "retail" competitive losses greatly exaggerates the economic impact of the so-called "losses" of these customers. In U S WEST's view, a customer who is served by a reseller of U S WEST's underlying facilities is a "lost" customer, and is counted the same for competitive purposes as a customer served 100% on a competitor's facilities. Clearly such a distorted definition of the market has no validity.[5]

Nor is there any basis to view "account control" as so indispensable that a customer served on a wholesale basis must be considered to be a competitive loss for U S WEST. Obviously, U S WEST continues to receive a substantial revenue stream from these lost customers. U S WEST's account control argument also ignores the fact that U S WEST already has an account -- a local services account -- with virtually 100% of the customers in the Phoenix MSA. U S WEST therefore can be presumed to already have an "account relationship" with the corporate personnel who make the decisions about purchases of high

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5 U S WEST also places excessive emphasis on changes in its share of the "transport segment" market between the second and fourth quarters of 1997. U S WEST Petition at 4, 21. This is obviously far too short an interval to establish a trend upon which significant regulatory decisions should be based. These changes may, for example, have resulted from cutovers of traffic from U S WEST to competitors' facilities, changes in facility routing that may not be likely to recur in a similar manner in the future.

capacity services, whether those decisionmakers also happen to buy services from resellers or CLECs.

There are several additional shortcomings in U S WEST's approach to defining and measuring the market. For example, U S WEST's use of "equivalent DS1s" as a measure of market share is misleading. Using that definition means that the loss of a single DS3 is viewed as the same as the loss of 28 DS1s. However, the price of a single DS3 may be only two to three times the price of a DS1, so the revenue loss of a DS3 is vastly overestimated by the use of the "equivalent DS1" measurement.[6]

U S WEST also states erroneously that AT&T has "disconnected a majority of the U S WEST-provided circuits and migrated them to alternative providers."[7] While AT&T has migrated some (but by no means all) of its DS3 services in the Phoenix area to CLEC facilities, it continues to purchase all of its multiplexing (DS3 to DS1 and DS1 to DS0) services from U S WEST. Additionally, nearly 90% of AT&T's DS1 services are purchased from U S WEST. On a dollar-weighted basis, AT&T estimates that, as of September 1, 1998, U S WEST collects approximately 80% of the dollars that AT&T spends in the

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6 For that reason, AT&T presents information regarding its total expenditures for high capacity services, which provides a more accurate depiction of the state of competition in the high capacity market than equivalent DS1 circuits.

7 U S WEST Petition at 17.

Phoenix LATA on high capacity services. Those facts stand in stark contrast to the picture painted by U S WEST of its competitive position.

U S WEST's arguments cannot obscure the controlling fact of its bottleneck control of essential facilities. The carrier that owns the wires (or fiber) to the customer controls the price, availability, quality, timeliness, repair intervals, available options, and many other aspects of the service that the customer experiences.

The Commission cannot, therefore, accept U S WEST's distorted view of "competitive losses." The fundamental legal limitations that result in U S WEST's substantial wholesale business are not unique to U S WEST, but are the consequence of considered legislative action. Of greater concern, U S WEST's regulatory relief would be granted even though it continues to own the vast majority of the facilities used to provide the "last mile" of services to customers, and without regard to whether U S WEST has lived up to its statutory obligations to make those facilities fairly available.

U S WEST also bases its forbearance request on the claim that the majority of its special access customers in Phoenix are "essentially on-network" for

CLECs.[8] U S WEST contends that CLECs can deploy facilities to thousands of customers in the Phoenix area at minimal cost, simply because the customers' locations are within 100 feet of a CLEC's fiber cable. U S WEST concludes from this assumption that "competitive providers could absorb a majority of U S WEST's high capacity demand almost immediately, incurring only minimal costs."[9]

The market facts, however, contradict U S WEST's predictions. U S WEST elsewhere notes that CLECs have been operating in Phoenix since 1994.[10] Were it as easy to connect to customers as U S WEST depicts, then its competitors would not have the modest end user building penetration levels described by U S WEST in its Petition.[11] The facts are, however, that establishment of

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8 U S WEST Petition at 27. For example, U S WEST states that "approximately 65 percent of U S WEST's current high capacity demand in the Phoenix area is located within 100 feet of existing competitive provider networks." U S WEST Petition at 26.

9 U S WEST Petition at 27. See also U S WEST Petition at 10 ("If U S WEST were to attempt to raise prices, either directly or through restricting output, its customers would quickly abandon U S WEST for one of the various competitive providers in the market.").

10 U S WEST Petition at 16.

11 U S WEST states that ELI has 30 to 45 buildings on its network, GST 15 to 25 buildings, MCI 25 to 35 buildings, MFS more than 50 buildings, and TCG more than 150 buildings. Cumulating these numbers would suggest that between 270 and 305 buildings are served on-network for CLECs. However,, major buildings tend to be served by multiple CLECs, so there is likely to be considerable duplication among the buildings served.

connections to customer premises is a time consuming, expensive and difficult proposition, which explains why so few buildings are on CLEC networks in Phoenix, and thus why so few customers today have a genuine competitive choice in high capacity service.

Even U S WEST's own data acknowledge that CLECs are not in any sense capable of "immediately" serving a majority of U S WEST's high capacity customers.
U S WEST's market analysis suggests that less than 300 buildings in the Phoenix area are served by its five competitors.[12] U S WEST, however, currently provides high capacity services to a total of 3,101 customer locations, and thus some 90% of the customer locations are not "on-network."[13] Of the more than 29,000 business establishments in the Phoenix area, only a minute fraction obtain service from any of U S WEST's competitors.[14]

There are many reasons that CLECs have not been able to expand their services into more end user locations in the Phoenix MSA. First, establishing a connection into a new building requires the CLEC to conduct negotiations with the landlord to permit the use of their risers, laterals, building entrances, and telephone closets.

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12 U S WEST Petition, Attachment A, at 25-26.

13 U S WEST Petition, Attachment B, at 3.

14 According to 1990 census data, there are a total of 29,238 businesses in Phoenix and the three largest neighboring towns of Scottsdale, Tempe, and Mesa.

Although to the best of AT&T's knowledge U S WEST is not asked to pay fees for such connections, an increasing number of landlords are demanding such payments from CLECs.[15] Additionally, the CLEC must make arrangements to connect its existing fiber through new rights-of-way into the building, which may entail crossing public or other rights of way and consequent negotiations with other parties. Finally, the cost of the electronics to terminate a fiber connection into a new building means that such connections are not economically viable unless the CLEC can foresee a significant amount of traffic from that building. Dedicating several fibers (it usually takes at least four fibers to wire a building) to a location that only produces a modest amount of traffic will not be an economically feasible arrangement, which further limits the number of locations to which CLECs can directly extend their fiber networks.[16]

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15 See AT&T Comments, September 14, 1998, at 48-52, in Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146.

16 U S WEST's claim that existing CLEC networks can serve all of Phoenix's traffic demands using 8% of their available capacity is both misleading and irrelevant. See U S WEST Petition, Attachment A at 29. U S WEST's calculation assumes that all the CLEC network facilities are acting as "backbone" facilities, or interoffice transport facilities. Its calculations necessarily assume, therefore, that all the traffic is being accumulated and multiplexed onto

(footnote continued on following page)

U S WEST's repeated references to the fact that AT&T and MCI/Worldcom have affiliates with local fiber networks are also misplaced.[17] Obviously, the existence of its affiliation with Teleport Communications Group Inc. ("TCG") has not meant that AT&T has migrated 100% of its services to TCG. As noted above U S WEST instead continues to collect some 80% of the monies spent by AT&T on high capacity services in the Phoenix area. Moreover, whether a CLEC is affiliated with an IXC or not, it can only provide competing services where its facilities are located, and the CLECs in the Phoenix area have obtained direct connections to only a tiny proportion of the customer locations.

(footnote continued from previous page)

these backbone arteries from somewhere else, using someone else's facilities. Accordingly, U S WEST's simplistic calculation ignores the fact that a CLEC's fibers serve as both its "last mile" facilities to its end user locations as well as its interoffice or backbone component.

17 U S WEST Petition at iii, iv, 3, 16, 17, 19, 31.

Additionally, U S WEST has already taken steps to prevent competitors from rapidly taking away its customers. U S WEST's high capacity rates feature large term discounts, coupled with substantial termination liabilities (among the highest in the industry). Customers seeking low cost services and lacking competitive alternatives thus find themselves locked into long term agreements that they cannot exit. For example, a customer signing up for a three year term on a $1,200 per month DS1 that wishes to switch to a competitor after the initial 8 months would face a termination liability of $24,960. Under such circumstances, there is no practical way that a competitor could take that contract away from U S WEST, and thus U S WEST's "risk" on that contract is virtually eliminated by its high termination liabilities. Significantly, U S WEST does not discuss the extent to which its base of customers are protected from loss by its high termination liabilities.

Accordingly, the Commission can give no credence to U S WEST's claim that its competitors are capable of promptly serving even a small portion of its existing Phoenix high capacity services, much less a majority of those services. The reality is that the competitive market in Phoenix is not sufficiently robust to constrain U S WEST's behavior, and accordingly the statutory standards for forbearance are not satisfied.

II. U S WEST HAS FAILED TO UTILIZE THE PRICING FLEXIBILITY THAT THE COMMISSION ALREADY ALLOWS.

The Commission has provided ILECs like U S WEST with a wide variety of pricing options that can be used in offering High Capacity services. Given that U S WEST is here requesting substantial new pricing flexibility, one would presume that it has exercised the full measure of the pricing options the Commission has already extended to it, before seeking even more. The fact of the matter is, however, that U S WEST has not done so.

One of the most significant pricing options for high capacity services currently available to ILECs is the opportunity to geographically deaverage their rates under the FCC's zone density pricing rule.[18] This rule allows ILECs to classify end offices into three pricing zones in a state, and to charge deaveraged prices for high capacity services offered from those offices. Although U S WEST has nominally established separate zone rate elements within its tariffs, it charges exactly the same rate within each zone, with the exception of the charge for multiplexing. Accordingly, U S WEST has elected not to fully utilize the geographic deaveraging ability already available to it, making its claim in this Petition that it

[18] See 47 C.F.R. § 69.123. This option has been available since 1992.

has a pressing need for even broader authority clearly suspect.

CONCLUSION

The U S WEST Petition suffers from numerous methodological and factual flaws, and fails to meet the standard for forbearance. Accordingly, it should be denied.

Respectfully submitted,

AT&T CORP.

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October 7, 1998

CERTIFICATE OF SERVICE

I, Margaret Brue, do hereby certify that on this 7th day of October, 1998, a copy of the foregoing "AT&T Opposition" was served by U.S. first class mail, postage prepaid, upon the following:

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